

July 12, 2007

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 12th day of July, 2007 at 8:00 P.M., and there were

PRESENT: JOHN ABRAHAM, JR., MEMBER
 WILLIAM MARYNIEWSKI, MEMBER
 RICHARD QUINN, MEMBER
 ARLIE SCHWAN, MEMBER
 ROBERT THILL, MEMBER
 JEFFREY LEHRBACH, CHAIRMAN

ABSENT: JAMES PERRY, MEMBER

ALSO PRESENT: JOHANNA M. COLEMAN, TOWN CLERK
 JOHN DUDZIAK, DEPUTY TOWN ATTORNEY
 JEFFREY H. SIMME, BUILDING INSPECTOR

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

PETITION OF DATO DEVELOPMENT, LLC:

THE FIRST CASE CONSIDERED BY THE ZONING Board of Appeals was that of the petition of DATO Development, LLC, S5540 Southwestern Boulevard, Hamburg, New York 14075, Jeffrey Palumbo, Esq. as agent, 9276 Main Street, Clarence, New York 14031, for six (6) variances for the purpose of constructing 48 townhouse units on property owned by the petitioner located at Forestream Village on Slate Bottom Drive, A/K/A Brookside Village Townhomes and identified on the tax map as Section Block Lot numbers 126.54-1-1 through 126.54-1-48 and 126.54-1-55.21 in the Town of Lancaster, New York, to wit:

- A. A variance from the requirements of Chapter 50, Zoning, Section 12A. of the Code of the Town of Lancaster. The property upon which this variance is sought is 4.16 acres in size. The petitioner's plans call for the construction of 48 dwelling units upon this property.

Chapter 50, Zoning, Section 12A. of the Code of the Town of Lancaster permits a maximum density of 8 units per gross acre where public sewers are available. The petitioner, therefore, requests a variance for the construction of 15 units in excess of the permitted 33 units.

- B. A variance from the requirements of Chapter 50, Zoning, Section 12C.(1)(e) of the Code of the Town of Lancaster. The petitioner's plans call for 112,536 square feet land coverage which equates to 62% land coverage.

Chapter 50, Zoning, Section 12C.(1)(e) of the Code of the Town of Lancaster permits a maximum land coverage of 35%, which equates to 63,423 square feet. The petitioner, therefore, requests a land coverage variance of 49,113 square feet.

- C. A variance from the requirements of Chapter 50, Zoning, Section 12C.(1)(g) of the Code of the Town of Lancaster. The petitioner's plans call for open space/land area of 68,674 square feet.

Chapter 50, Zoning, Section 12C.(1)(g) of the Code of the Town of Lancaster requires that the minimum gross land area to be devoted to attached units excluding the area of public streets on the perimeter of that area shall be equal to the number of dwelling units, 48, times 4,300 square feet, which equates to 206,400 square feet. The petitioner, therefore, requests a 137,726 square foot open space/land area variance.

- D. A variance from the requirements of Chapter 50, Zoning, Section 12C.(1)(b)[2] of the Code of the Town of Lancaster. The petitioner's plans call for a 19 foot rear yard set back for 5 of the buildings, namely clusters #19, #20, #21, #22 and #23.

Chapter 50, Zoning, Section 12C.(1)(b)[2] of the Code of the Town of Lancaster requires a 40 foot rear yard set back. The petitioner, therefore, requests a 21 foot rear yard set back variance.

- E. A variance from the requirements of Chapter 50, Zoning, Section 12C.(1)(b)[2] of the Code of the Town of Lancaster. The petitioner's plan calls for an interior side yard set back of 18 feet between clusters #19 and #20 and between clusters #20 and #21.

Chapter 50, Zoning, Section 12C.(1)(b)[2] of the Code of the Town of Lancaster requires a 40 foot interior side yard set back between buildings. The petitioner, therefore, requests a 22 foot side yard set back variance between buildings, namely between clusters #19 and #20 and between clusters #20 and #21.

- F. A variance from the requirements of Chapter 50, Zoning, Section 12C.(1)(b)[2] of the Code of the Town of Lancaster. The petitioner's plans call for a building, namely cluster #24, to have a west side yard set back of 37.22 feet.

Chapter 50, Zoning, Section 12C.(1)(b)[2] of the Code of Lancaster requires a side yard set back of 40 feet. The petitioner, therefore, requests a 2.78 foot west side yard set back variance for cluster #24.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Environment and Planning of the time and place of this public hearing.

Copy of a letter notifying the New York State Department of Transportation of the time and place of this public hearing.

Copy of a letter notifying the Town of Elma and the Town of Cheektowaga of the time and place of this public hearing.

Copy of a letter dated July 12, 2007 and received July 12, 2007 from the petitioner's attorney requesting that this case be adjourned to the August 9, 2007 regular meeting.

PERSONS ADDRESSING THE BOARD

_____None

IN THE MATTER OF THE PETITION OF DATO DEVELOPMENT, LLC

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster, with the concurrence of the petitioner, agrees that an adjournment of this hearing is in the best interest of both the Town of Lancaster and the petitioner and will provide all parties further opportunity to discuss a possible compromise to the current situation;

THE FOLLOWING RESOLUTION WAS MADE
BY MR. LEHRBACH, WHO MOVED ITS
ADOPTION, SECONDED BY MR. QUINN
TO WIT:

BE IT

RESOLVED that this hearing be adjourned until August 9, 2007, thereby permitting all interested parties further opportunity to discuss a possible compromise to the current situation.

The question of the adoption of the foregoing motion was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. PERRY	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution to adjourn this case until August 9, 2007 was thereupon adopted.

July 12, 2007

PETITION OF BRIAN S. GRAHAM:

THE 2nd CASE CONSIDERED BY THE ZONING Board of Appeals was that of the petition of Brian S. Graham, 30 Biscayne Drive, Lancaster, New York 14086 for one [1] variance for the purpose of erecting a six [6] foot high fence in a required open space area on premises owned by the petitioner at 30 Biscayne Drive, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot fronting on Biscayne Drive with an exterior side yard [considered a front yard equivalent] fronting on Impala Parkway. The petitioner proposes to erect a six [6] foot high fence within the required open space area of the exterior side yard fronting on Impala Drive.

Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster limits the height of a fence or wall extending into a front yard or an exterior side yard [considered a front yard equivalent] to three [3] feet in height. The petitioner, therefore, requests a three [3] foot fence height variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Brian Graham, petitioner
30 Biscayne Drive
Lancaster, New York 14086

Proponent

IN THE MATTER OF THE PETITION OF BRIAN GRAHAM

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. LEHRBACH, WHO MOVED ITS
ADOPTION, SECONDED BY MR. ABRAHAM
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Brian Graham and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of July 2007, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the applicant is the present owner of the premises in question.

WHEREAS, the property for which the applicant is petitioning is within a Residential District 1, (R-1) as shown on the Zoning Map of the Town of Lancaster.

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That there are similar fences within the petitioner's neighborhood, namely on Matthews Drive and Biscayne Drive.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That sight lines will not be impaired by the addition of this fence.

That the requested area variance relief is substantial, however it is necessary to achieve the petitioner's objective.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

That such fence will not unduly shut out light or air to adjoining properties.

That such fence will not create a fire hazard by reason of its construction or location.

NOW, THEREFORE, BE IT

RESOLVED that based upon these findings, the relief sought be and is hereby **GRANTED** subject to the following conditions which in the opinion of this board are appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- the fence is to be located three feet from the sidewalk on the north side of the subject premises, namely Impala Parkway
- the Northwest corner of the proposed fence is to be angled $45^{\circ} \pm$ on the interior angle for a distance of six to ten feet and such placement is to be determined by the Building Inspector at the time of installation

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. PERRY	WAS ABSENT
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED**.

July 12, 2007

PETITION OF TIM HORTONS THE THD GROUP LLC:

THE 3rd CASE TO BE CONSIDERED BY THE ZONING Board of Appeals was that of the petition of Tim Hortons, the THD Group LLC, 4455 Transit Road Suite B, Williamsville, New York 14221, for four variances for the purpose of constructing a restaurant on premises located at 4849 Transit Road, Lancaster, New York. Said property is owned by Arista Development LLC, located at 1330 Niagara Falls Boulevard, Tonawanda, New York 14150; to wit:

- A. A variance from the requirements of Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster. The proposed structure will result in a north side yard set back of 14.3 feet.

Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster requires a 50 foot north side yard set back. The petitioner, therefore, requests a 35.7 foot north side yard set back variance.

- B. A variance from the requirements of Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster. The plans call for landscaping to be 4.3 feet at the north side yard.

Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster requires 25 feet of landscaping along the north side yard. The petitioner, therefore, requests a variance for landscaping of 20.7 feet along the north side yard.

- C. A variance from the requirements of Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster. The plans call for landscaping to be 10 feet at the rear yard.

Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster requires 25 feet of landscaping along the rear yard. The petitioner, therefore, requests a variance for landscaping of 15 feet along the rear yard.

- D. A variance from the requirements of Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster. The proposed structure will result in a front yard set back of 47 feet.

Chapter 50, Zoning, Section 19C.(3) of the Code of the Town of Lancaster requires a 60 foot front yard set back. The petitioner, therefore, requests a 13 foot front yard set back variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Environment and Planning of the time and place of this public hearing.

Copy of a letter notifying the New York State Department of Transportation of the time and place of this public hearing.

Copy of a letter notifying the Town of Cheektowaga of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Jeffrey D. Palumbo, Esq. agent for Tim Hortons the THD Group LLC 9276 Main Street Clarence, New York 14031	Proponent
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Robert Bender representing Tim Hortons, the THD Group LLC 4455 Transit Road Suite B Williamsville, New York 14221	Proponent
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IN THE MATTER OF THE PETITION OF TIM HORTONS THE THD GROUP, LLC

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. THILL, WHO MOVED ITS
ADOPTION, SECONDED BY MR. MARYNIEWSKI
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Tim Hortons, the THD Group, LLC and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of July 2007, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the applicant is the duly authorized agent of the owner.

WHEREAS, the property for which the applicant is petitioning is within a General Business District, (GB) as shown on the Zoning Map of the Town of Lancaster.

WHEREAS, the Erie County Division of Planning has been notified of the proposed zoning action, however, has not commented on this action.

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

That the Residential District 2, (R-2) Zoning contiguous to the north property line of the subject premises, which requires a 25 foot landscaped set back, is in actuality the pan handle Residential District 2, (R-2) paved entrance way of Michael Anthony Lane to the occupied Residential District 2, (R-2) use developments which are substantially to the east of the subject premises.

That there are no occupied Residential District 2, (R-2) dwelling units within 100 feet of the subject premises.

**NOW, THEREFORE, BE IT
RESOLVED** that based upon these findings, the relief sought be and is hereby
GRANTED.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED NO
MR. MARYNIEWSKI	VOTED YES
MR. PERRY	WAS ABSENT
MR. QUINN	VOTED NO
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variances was thereupon **ADOPTED.**

July 12, 2007

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was adjourned at 9:20 P.M.

Signed _____
Johanna M. Coleman, Town Clerk and
Clerk, Zoning Board of Appeals
Dated: July 12, 2007